IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4857 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PINE CHEMICALS - Petitioner(s)

Versus

DEEPAKKUMAR R BRAHMBHATT - Respondent(s)

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Appearance :

MR THAKKAR for MR KM PATEL for Petitioner No(s).: 1.

MR PRABHAKAR UPADYAY for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 23/08/2005

ORAL JUDGMENT

1.0 The petitioner has prayed to quash and set aside the award dated 26.03.1999 passed by the Labour Court,

Vadodara, in Reference No. 462 of 1994, whereby the said reference was allowed.

2.0 The brief facts of the case are that the respondent herein was appointed as a Trainee Operator by the predecessor of the petitioner Company, one M/s. Comets & Pigman Pvt. Ltd. for a period of six months by Appointment Order dated 25.09.1989. After completion of the training period, the petitioner was appointed as an Operator on probation for six months vide order dated 26.03.1990. As the services of the respondent were not found to be satisfactory, the period of probation was extended from time to time.

2.1 It is the case of the petitioner that since the respondent had not improved his conduct in spite of several warnings and had remained absent from duty frequently unauthorizedly, his name was struck off from the muster roll on 02.12.1991 and was instructed to collect his legal dues from the petitioner's office.

2.2 Thereafter, the respondent raised a dispute stating that his services have been orally terminated by the petitioner on 27.09.1991. The said dispute, ultimately,

culminated into a reference before the Labour Court, Vadodara. The Labour Court, by impugned award, allowed the said reference. Hence, this petition.

3.0 Mr. Thakkar learned advocate appearing for Mr. KM Patel for the petitioner has submitted that in view of the Terms and Conditions provided in the Appointment Order dated 26.03.1990, and, more particularly, Conditions No.1 & 2 therein, the respondent was never confirmed in service and that at the relevant point of time, he was on probation only.

3.1 Mr. Thakkar has further contended that though a specific contention was raised with respect to the provisions of Section 2(oo)(bb) of the Industrial Disputes Act, 1947, the Labour Court has not considered the same and has entertained the reference. He has, therefore, submitted that the impugned award of the Labour Court is required to be quashed and set aside.

3.2 Mr. Thakkar has relied upon a decision in the case of ***Viveka Nand Sethi v. Chairman, J&K Bank Ltd. & ors. Reported in 2005 L.L.R pg. 641***, wherein it has been held that a limited enquiry as to whether the employee

concerned had sufficient explanation for not reporting to duties, after the period of leave had expired or failure on his part on being asked so to do, amounted to sufficient compliance of the requirements of the principles of natural justice. He has submitted that the respondent herein was given several opportunities, but, he had not improved his conduct, and therefore, the Labour Court has committed serious error in allowing the reference of the respondent.

4.0 Before proceeding with the matter, it be noted that when the matter was on board last time, a suggestion was put by this Court that the dispute between the parties can be amicably settled on payment of a reasonable amount by the petitioner to the respondent by way of compensation since the reference in question is of the year 1991 and this Court had stayed the implementation of the impugned award subject to the provisions of Section 17(B) of the Industrial Disputes Act, 1947. The said suggestion was acceptable to the petitioner. Today, before proceeding with the hearing of the matter, learned advocate for the respondent has stated that the respondent is not agreeable to the suggestion put forward by this Court. Hence, this Court has proceeded with the

matter on merits.

5.0 I have heard learned counsel for the parties and perused the documents placed on record. It is not in dispute that the respondent herein was initially appointed on probation for a period of six months from 01.03.1990. It would be relevant to refer to Conditions No.1 & 2 of the said Appointment Order dated 26.03.1990, which reads as under;

> "1. You will be on probation for a period of six months from 01.03.1990. your period of probation is liable to further extension at the discretion of the company. **At the expiry of the said six months or the extended period of probation if you are not confirmed by a letter in writing your period of probation shall be deemed to have been extended until such time, a letter of confirmation or otherwise is given to you.** Your confirmation will also be subject to your passing a medical examination by a Registered Medical Practitioner approved by the company.
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> 2. **During the period of probation, either party has a right to terminate this contract** by giving 24 hours notice or payment in lieu thereof to other party, without assigning any reasons. The notice may be delivered by hand or registered post and the notice period shall commence from the date of delivery in the former case and the date of despatch in the latter case."
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> (Emphasis supplied)

6.0 On a bare perusal of the aforesaid Conditions, it is

very clear that the services of the respondent could be terminated at any time during the period of probation. The letter of appointment issued to the respondent contained an express provision of six months probation from 01.03.1990. The probation period was extended from time to time on account of misconduct on the part of the respondent. Learned advocate for the respondent was not able to produce on record any order showing that the respondent was confirmed in service. In the absence of any such order, it would be difficult for this Court to arrive at a conclusion that the respondent was confirmed in the service and that he was not a probationer.

7.0 Since the termination of services of the respondent was under a stipulation contained in the letter of appointment, it cannot be regarded as retrenchment in view of Section 2(oo)(bb) of the Industrial Disputes Act, 1947, as held by the Labour Court. Moreover, assuming even if the action of the petitioner amounted to retrenchment, then also, the fact that the respondent has admitted in his cross-examination that he had received the letter dated 02.12.1991, whereby he was instructed to collect his legal dues, it cannot be said that the provisions of Section 25-F were not complied with.

Therefore, the view taken by the Labour Court that the termination of the respondent amounted to retrenchment is illegal and erroneous.

8.0 In the case of ***State of Punjab & ors. v. Sukhwinder Singh reported in 2005 A.I.R. S.C.W. pg. 3477***, it has been held that even if some kind of preliminary inquiry or fact-finding is held in which the employee is not afforded an opportunity of hearing, the order of discharge of a probationer cannot be treated as an order of punishment as the appointing authority has to necessarily ascertain all the relevant facts before taking a decision whether the probationer should be retained in service or not.

9.0 In the present case, the respondent was appointed on probation since no order confirming him in service was issued by the petitioner. In that view of the matter and in view of the principle laid down by the Apex Court in State of Punjab & ors case (supra), the impugned award of the Labour Court is required to quashed and set aside.

10.0 For the foregoing reasons, this petition is allowed. The impugned award dated 26.03.1999 passed by the Labour

Court, Vadodara, in Reference No. 462 of 1994, is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

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